

Statement by Lanny J. Davis, January 22, 2014

Attorney for Attorney General Kathleen Kane

On the publication of the Grand Jury Report # 2

Let me reiterate even more today, after the publication of the Grand Jury Report, what I have said before:

This entire process seems more today than ever before a railroad train with biased misuse of the Grand Jury system. There have been, as we all know, massive leaks from this Grand Jury process, that Attorney General Kane is guilty of illegal leaks. And yet, those same leaks have not been investigated over the past four months by the Special Prosecutor – except for what appears to be useless attempt to subpoena reporters, who are protected (as admitted in the Grand Jury Report) by the state Shield Law. This alone demonstrates bias and unfair targeting of the Attorney General by Mr. Carluccio. And all leaves me with the firm impression that this investigation of Attorney General Kane has been largely driven from the beginning by angry men, many of them embarrassed by extreme pornography found on their state-paid-for computers sent during office hours; men who an outside legal expert described were responsible for “inexcusable delay” in getting child predator Jerry Sandusky off the street; men who are on a political vendetta against the first elected female Attorney General ever in Pennsylvania.

It should also be obvious that any comments I make today about Judge Carpenter’s decision regarding the Order and the publication of the Grand Jury Report are also applicable to the Special Prosecutor, Thomas G. Carluccio, since it is likely he encouraged the publication of the Report today and had a central role in drafting it.

First: The supervising judge of the Grand Jury investigating Attorney General Kathleen Kane appears to have violated the Investigating Grand Jury Act when he permitted the distribution to the media today of the Grand Jury’s Report # 2.

Section 4552 (b) of the Act authorizes the supervising judge to make a Grand Jury report public. But Section 4552(c) states that “if the supervising judge finds that the filing of such report as a public record may prejudice fair consideration of a pending criminal matter” then the “supervising judge...shall order such report sealed and such report shall not be subject to subpoena or public inspection during the pendency of such criminal matter except upon order of the court.” (Emphasis added).

There can be no dispute whatsoever that this Report accusing Kathleen Kane of illegal leaks of Grand Jury information “may” prejudice her legal position before due process and trial. Thus under the express terms of the Act, with all due respect, it seems to me that Judge Carpenter may have violated this provision by making the Report public.

Second: Section 4552 (e) states that “if the supervising judge finds that the report is critical of an individual not indicted for a criminal offense, the supervising judge may in his sole discretion allow the named individual to submit a response to the allegations contained in the report. The supervising judge may then in his discretion allow the response to be attached to the report as part of the report before the report is made part of the public record pursuant to subsection (b).” (Emphasis added).

There can be no doubt that this report is “critical” of Kathleen Kane. I have already suggested the Report should not have been published under Section 4552(c). But once the judge made the decision to make the Report public, I respectfully suggest he abused his discretion when he decided to publish the report without allowing Attorney General Kane to submit a response to the allegations of criminal conduct, and for that response to be attached to the Report released to the public today. At the very least, his decision not to allow the rebuttal suggests a violation of fundamental rules of due process and fairness.

Finally, I submit that the decision of Judge Carpenter to permit the Order and Grand Jury Report dated January 20 to be made public today, on January 22, violates the spirit, if not the letter, of the Stay issued by the Pennsylvania Supreme Court yesterday, on January 21. The Stay – essentially, a freeze on the status quo – was a “stay of Presentment No. 60.” The Court also stayed “any prosecution by the District Attorney of Montgomery County stemming from that Presentment.”

It should be noted what the context of this Stay is. The stay was issued so that the Supreme Court could determine, upon the petition of Attorney General Kane, whether or not Mr. Carluccio’s appointment as a special prosecutor by Judge Carpenter was legal or illegal, constitutional or unconstitutional.

I submit that the decision to make public a Grand Jury Report today that concluded (we believe wholly wrongfully) that Attorney General Kane had illegally leaked Grand Jury information constitutes a prejudicial change to the status quo as represented by Presentment No. 60 and that Judge Carpenter and his special prosecutor should not have allowed publication of the Grand Jury Report.

One final comment about the contents of the Report:

Please recall my comments on January 10 at my press conference in Philadelphia. Attorney General Kane authorized only the release of a brief report written by a senior official in the AG’s office in March of 2014. This was five years after the 2009 Grand Jury – at which time she was a stay-at-home mom. She never took an oath of secrecy regarding that 2009 Grand Jury. Without taking such an oath, she cannot be found to have violated the Grand Jury Secrecy Act, which requires only those who take the oath, and specifically listed in the Act, as subject to secrecy requirements.

The Grand Jury Report confuses the publication in newspaper of a 2009 Memorandum, written by the then Deputy Attorney General William Davis, with the 2014 memorandum that Attorney General Kane authorized be disclosed to the media. That confusion has led them to the erroneous conclusion, and perhaps witnesses who testified, that Attorney General Kane authorized the release of the 2009 memorandum. She did not. To repeat what I said on January 10 in my press conference: Attorney General Kane has said that she never saw or read, much less authorized the release of, that 2009 memorandum.

The Grand Jury Report is wrong in many other respects. Suffice it to say today that I will repeat what the Attorney General has said repeatedly: She has done nothing wrong. She has never authorized the disclosure of Grand Jury information in violation of the Pennsylvania Grand Jury Secrecy Act. She told the truth to the Grand Jury at all times. And I will add after recent disclosures: She never obstructed justice. She never “oppressed” anyone under the law. And Judge Carpenter did not list violation of the Grand Jury Secrecy Act in the list of four alleged crimes that were made public in the last several days – this despite all the leaks that she had violated the Act for the last four months and the appointment of the Special Prosecutor to use the Grand Jury to investigate illegal leaks.

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